STATE REPRESENTATIVE
# CORY MASON
WISCONSIN STATE ASSEMBLY
62ND ASSEMBLY DISTRICT

**TO:** Wisconsin state Senate Committee on Labor, Elections, & Urban Affairs

**FROM:** State Representative Cory Mason

**DATE:** 28 August 2007

**RE:** Senate Bill 121—Arbitration and fair-share agreements during collective bargaining negotiations under MERA

Senate Bill 121 is a bill that would restore fairness to the bargaining process regulated by the Municipal Employment Relations Act under §111.70 of the Wisconsin State Statutes.

Labor agreements are contracts between the employer and the employees represented in a collective bargaining unit. Those contracts are an agreement between the two parties that define the wages, hours, and working conditions that both the employer and employees can rely upon. Contracts last a mutually agreed upon length of time.

If the terms of a contract have expired and the employer and employee have not yet reached a new contract, usually the status quo of the previous contract stays in place until a new contract is mutually agreed upon by both parties. It is similar to the way we as a state have continued spending levels from the previous biennium while both parties negotiate the budget, even though the biennium ended on July 1st.

There seems to be confusion that this bill seeks to reconcile. It says that while the employer and employee are at impasse, they must continue the status quo of the previous contract. It makes it clear that the employer cannot simply refuse to acknowledge the employees' collective bargaining unit and pass through its dues as it is required to do under the contract. It would be the equivalent of the state refusing to give cities, towns, and school districts their shared revenue and state funding because the conference committee had not yet completed its work.

I urge my legislative colleagues to pass SB121 because it is the fair thing to do; it respects the rule of law in contract disputes; and it maintains the integrity of public sector collective bargaining in Wisconsin.

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John H. Ashley, Executive Director

TO: Members, Senate Committee on Labor, Elections and Urban Affairs
FROM: Dan Rossmiller, Legislative Services Director
DATE: August 28, 2007
RE: **Senate Bill 121**, relating to arbitration and fair–share agreements during collective bargaining negotiations under the Municipal Employment Relations Act.

The Wisconsin Association of School Boards (WASB) strongly **opposes** Senate Bill 121. The current bargaining law allows school boards and other local governments to refuse to honor fair-share and grievance arbitration provisions during a collective bargaining agreement hiatus period.

Employers almost never refuse to honor fair-share provisions. Occasionally, an employer will refuse to honor a grievance arbitration provisions during a contract hiatus. Usually, this happens when the alleged contract violation is based on permissive contract language—language the employer was not obligated to bargain over in the first place.

Senate Bill 121 would make it a prohibited practice under Wisconsin's Municipal Employment Relations Act (MERA) for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair–share agreement during a contract hiatus, a period during which negotiations over a new contract are underway.

Under the current law, an employer violation of contract language that is a mandatory subject of bargaining (i.e., a subject on which the employer has a statutory duty to bargain) during a contract hiatus can be contested by a prohibited practice complaint under s.111.70 (3)(a)4, Stats.(refusal to bargain). A prohibited practice complaint (based on a refusal to bargain) is not available if an alleged contract violation concerns permissive contract language. This is because an employer cannot be accused of refusing to bargain over matters it has no duty to bargain over in the first place.

Senate Bill 121 would obligate the parties to use grievance arbitration to resolve disputes that arise during a contract hiatus as to the meaning or application of the expired contract, including those involving permissive subjects of bargaining. This effectively converts any permissive subject of bargaining in a collective bargaining agreement into binding contract language during the hiatus.

The WASB urges members to **oppose** Senate Bill 121.

APPENDIX

As stated above, Senate Bill 121 would make it a prohibited practice under Wisconsin's Municipal Employment Relations Act (MERA) for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair-share agreement during a contract hiatus. To understand what this bill does, it is necessary to understand the definitions of these terms.

*What is a "grievance arbitration agreement"?*

Grievance arbitration is one means for resolving disputes that arise as to the meaning or application of contract provisions. If the contract calls for such disputes to be decided through grievance arbitration, that provision is called a grievance arbitration agreement. Under current law, such a dispute can also be litigated before the WERC as a complaint. The filing fee for a complaint is $80. The filing fee for grievance arbitration is $500 (split equally between the union and the employer).

*What is a "fair-share agreement"?*

Section 111.70(1)(f), Wis. Stats., defines a "fair-share agreement" as "an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members." Under this definition, such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization.

*What is a "contact hiatus"?*

When a collective bargaining agreement has expired and no successor agreement has yet been ratified, the situation is referred to as a "contract hiatus." It is currently the case that hundreds of Wisconsin districts that have not ratified their successor agreements are in a "contract hiatus" period.

A series of Wisconsin Employment Relations Commission (WERC) decisions interpreting an employer's duty to bargain hold that mandatory subjects of bargaining dealt with in the collective bargaining agreement do not evaporate during a contract hiatus. Rather they must remain intact per the terms of the expired agreement. That is, the district must maintain what is called the **"dynamic status quo"** regarding most mandatory subjects of bargaining.

*What is a "mandatory subject of bargaining"?*

> **"Mandatory** subjects of bargaining" are those subjects that are primarily related to the wages, hours, and working conditions of the employees in the bargaining unit.

Examples of mandatory subjects of bargaining are: wages; fringe benefits; disciplinary procedures; rights of employees on layoff. Employers (and employees) have duty to bargain mandatory subjects of bargaining.

The **dynamic status quo** rule severely limits what would otherwise be the district's right to act unilaterally under the theory that if a district has a duty to bargain insurance coverage, for example, it must make changes through negotiations rather than by unilateral action. As a public policy matter, the **dynamic status quo** rule provides a number of protections for teachers. (For example, even though the agreement has expired, the district is bound to abide by any provision regarding the nonrenewal or termination of teachers during a contract hiatus—e.g., termination only for good cause.)

One the other hand, there are subject on which the district and union have no obligation to bargain. These are called "permissive" subjects of bargaining. The district and union, can, if they wish, to bargain on these issues, but are not required to do so. The district need not maintain the **"dynamic status quo"** regarding permissive subjects of bargaining. Permissive subjects of bargaining dealt with in the collective bargaining agreement evaporate during a contract hiatus.

*What is a "permissive subject of bargaining"?*

**"Permissive"** subjects of bargaining are those subjects that are primarily related to educational policy and management of the school district. Examples of permissive subjects of bargaining are: the qualifications for a position; a decision to offer summer school; class size; need for layoff; the tasks teachers will be assigned to perform during their normal working hours.

*What is a "prohibited practice"?*

Section 111.70(3) (a), Stats., describes a list of prohibited practices for school districts. A school district is NOT permitted to:

1. Interfere with, restrain or coerce employees from exercising their right to organize for the purposes of collective bargaining.
2. Involve itself in the formation or administration of any labor organization.
3. Encourage or discourage membership in any labor organization.
4. Violate the district's duty to bargain.
5. Bargain with individuals or groups of employees who hold positions within the bargaining unit. EXAMPLES: Retirement benefits, starting bonuses, pay for extracurricular activities.
6. Violate a collective bargaining agreement.
7. Fail to implement an arbitrator's decision.

There is a similar list of "prohibited practices" that apply to employees and their representative. Prohibited practices are resolved in proceedings before the Wisconsin Employment Relations Commission.